

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA,	x	
	:	Criminal Action
	:	
Plaintiff,	:	No. 2:22-cr-00097
	:	
v.	:	
	:	
RANDY PRICE,	:	
	:	
Defendant.	:	
	x	

**EXCERPT TRANSCRIPT OF PROCEEDINGS**  
PRETRIAL MOTIONS HEARING  
BEFORE THE HONORABLE JOSEPH R. GOODWIN  
UNITED STATES DISTRICT COURT JUDGE  
IN CHARLESTON, WEST VIRGINIA  
SEPTEMBER 26, 2022

APPEARANCES:

For the Government:	Negar Kordestani, Esq. Assistant United States Attorney United States Attorney's Office P.O. Box 1713 Charleston, WV 25326-1713
For the Defendant:	Lex Coleman, Esq. Assistant Federal Public Defender Federal Public Defender's Office Room 3400 300 Virginia Street East Charleston, WV 25301

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Kimberly Kaufman, RMR, CRR, CRC  
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Proceedings recorded by mechanical stenography; transcript  
produced by computer.

1           **EXCERPT OF PROCEEDINGS** had before The Honorable  
2           Joseph R. Goodwin, Judge, United States District Court,  
3           Southern District of West Virginia, in Charleston, West  
4           Virginia, on September 26, 2022, at 1:30 p.m., as follows:

5           **(Proceedings held previously not transcribed.)**

6           THE COURT: Now, let's deal with your motion to dismiss  
7           on constitutional grounds.

8           The government tells me that the law is constitutional.  
9           Let me ask you a few questions.

10          MS. KORDESTANI: Yes, Your Honor.

11          THE COURT: Does the government argue that the  
12          conduct regulated in the serial numbers statute is not  
13          covered by the plain text of the Second Amendment?

14          MS. KORDESTANI: That's right, Your Honor.

15          We would argue that the 922(k) charge and the  
16          prohibited conduct it covers goes more to addressing  
17          conditions and sort of qualifications on the types of  
18          firearms.

19          THE COURT: It says possessing it.

20          If I inherited a gun from my dad and the serial number  
21          was obliterated when I inherited it and picked it from his  
22          house, that would violate the possession piece of the  
23          statute, the very thing he's charged with, right?

24          MS. KORDESTANI: Yes, Your Honor, you're right.

25          THE COURT: Mr. Coleman, if the firearm functions

1 exactly the same with the serial number as it does without a  
2 serial number, how does the government's requirement that  
3 firearms bear serial numbers violate Mr. Price's Second  
4 Amendment rights?

5 MR. COLEMAN: Because by virtue of having one  
6 without a serial number he's being charged criminally and  
7 being dispossessed of it.

8 THE COURT: What's your answer to that?

9 MS. KORDESTANI: I apologize, Your Honor.

10 My answer is he was possessed in the -- he was -- he  
11 didn't have that right in the first place because he's a  
12 felon who is prohibited from --

13 THE COURT: Well, you charged him with that.

14 MS. KORDESTANI: Yes.

15 THE COURT: This is -- I'm talking about the --  
16 and, frankly, the courts are fairly unanimous so far -- I'm  
17 not ruling, but courts are fairly unanimous so far that even  
18 after *Bruen* the felon in possession statute is still viewed  
19 as constitutional by most courts and there's considerable  
20 dicta in that case as well, but I'm dealing with the  
21 possession charge, which is a separate felony.

22 MS. KORDESTANI: I think ultimately, Your Honor,  
23 then the United States would -- would go to the second part  
24 of the analysis under *Bruen*, as I understand it, of whether  
25 there is a tradition of -- a historical tradition of

1 regulating what is prohibited in this case as relates to the  
2 922(k).

3 There is a historical tradition of --

4 THE COURT: What -- what is that tradition and  
5 where do you find that?

6 MS. KORDESTANI: Well, Your Honor, I believe it's  
7 relating to some of the treatises and analysis of laws that  
8 existed either, you know, from, of course, the founding time  
9 forward. And that is very extensive, as you know, and the  
10 parties have briefed that very extensively, as you know.

11 To come off the top of my head, I would have to look at  
12 my motion, but generally I would state, Your Honor, that  
13 states, as well as the United States, have --

14 THE COURT: Let me ask Mr. Coleman.

15 Why are the government's analogies, the historical  
16 record and regulations in place at the time of the founding,  
17 insufficient?

18 MR. COLEMAN: Well, for starters, guns were not  
19 registered or had no numbers in 1791 when our Constitution  
20 was adopted or in 1792 when the Bill of Rights was ratified  
21 by the First Congress. And within the 15 states that by  
22 1792 constituted our country at the time, there was no state  
23 constitution and certainly no state statute regulating  
24 firearms by saying if you don't have a number on it, you  
25 can't have a musket to fight Indians or go kill a deer to

1 eat. And smiths at that time manufacturing them -- you  
2 didn't have the big companies. You had individual makers.  
3 I take that back. There might have been a few in the U.S.,  
4 but they -- obviously everything was much, much smaller back  
5 then.

6 And this is a new thing they came up with in the  
7 '60s -- actually before that. Under the NFA initially if  
8 they were --

9 THE COURT: Certainly not in the time frame that  
10 the Supreme Court suggests.

11 MR. COLEMAN: Absolutely not.

12 I mean, if -- if the problem is new in the modern  
13 times, it does encourage and authorize looking at  
14 analogues, but there aren't any.

15 THE COURT REPORTER: I'm sorry. Looking at what?

16 THE COURT: I'm sorry?

17 THE COURT REPORTER: Looking at what?

18 MR. COLEMAN: Analogues.

19 Judge Thomas's majority opinion limited that to  
20 situations where the problem didn't exist at the time of the  
21 founding and where they hadn't chosen to address the problem  
22 a different way.

23 This was initially designed to keep up with certain  
24 guns with certain characteristics to charge a tax. And it  
25 was only after 1968 in the 20th century that it became broad

1 based and we got zero to ten going to prison if your gun  
2 didn't conform.

3 THE COURT: What do you disagree with out of what  
4 Mr. Coleman just said?

5 MS. KORDESTANI: Yes, Your Honor.

6 I think that I agree with him in that there has to be a  
7 historical analogue in order to uphold the  
8 constitutionality, but as Judge --

9 THE COURT: What would that be here?

10 What's the utility of the government requiring serial  
11 numbers on firearms?

12 MS. KORDESTANI: To be able to identify them,  
13 connect them, and connect them to other crimes that may be  
14 committed. And I think that ties back to the overall  
15 purpose of what is referred to in the analysis of this  
16 historical tradition, Your Honor.

17 It's about citizens -- law-abiding citizens having a  
18 right to bear arms. It's about public safety. And there's  
19 instances where individuals, felons and non-felons alike  
20 as -- specifically as relates to the 922(k) charge, it's  
21 whether somebody that's law-abiding or not poses -- should  
22 have a firearm and if they don't does that pose some kind of  
23 danger to public safety.

24 And there is a historical tradition, and as noted in  
25 dicta in the *Heller* decision, that there have been

1 regulations and prohibitions of certain parts of society  
2 going back to the Founders' era that were not permitted and  
3 should not be permitted to have firearms.

4 And to require an exact historical analogue just leads  
5 to kind of absurd results. There's no way I'll ever be able  
6 to prove that it --

7 THE COURT: Wouldn't an analogous regulation need  
8 to be something like a requirement that all firearms have an  
9 identifiable marking that couldn't be removed or altered?

10 MS. KORDESTANI: Yes. And that's supposedly the  
11 goal of keeping -- you know, assigning serial numbers to  
12 firearms, but there's always a way for people to find --

13 THE COURT: No, I'm saying back then.

14 MS. KORDESTANI: Yes, Your Honor, I think that  
15 would be the analogue, exactly, to go to that --

16 THE COURT: Well, Mr. Coleman points out this is a  
17 tax law, but assuming that the purpose is to keep guns -- or  
18 one of the purposes is to keep firearms out of the hands of  
19 criminals, isn't it true that the Founders addressed that  
20 through substantially different means? They limited gun  
21 ownership.

22 MS. KORDESTANI: Yeah, the other means that were  
23 different, Your Honor, was, for example, that back in the  
24 day, if we're going to go that far back, if you were  
25 convicted --

1 THE COURT: I'm not going that far back.

2 MS. KORDESTANI: Okay.

3 THE COURT: I'm saying the United States Supreme  
4 Court is going that far back.

5 MS. KORDESTANI: Forgive me, Your Honor. The  
6 Supreme Court.

7 THE COURT: The United States Supreme Court after  
8 1791. Bring me back to the 18th century and tell me what it  
9 is so that it would allow me to uphold this possessory  
10 prohibition constitutional.

11 MS. KORDESTANI: I think when you boil the  
12 defendant's argument down, what is really being asserted is  
13 if there's not an exact regulation or prohibition from 1791,  
14 then this conduct is not protected.

15 THE COURT: Well, give me any one that's even  
16 analogous in your view.

17 MS. KORDESTANI: Well, what I wanted to do was  
18 give an example in sort of the reverse, Your Honor.

19 You said the courts when it points out give an example,  
20 what I'm trying -- one of the things I wanted to point out  
21 was the historical landscape of crime and punishment has  
22 changed and that is and should be taken into effect.

23 For example, in 1791, or even maybe getting a little  
24 closer in time, a convicted felon could be -- could lose  
25 their life if they were convicted of a felony. You could be



1 sentenced to death.

2 So maybe they weren't thinking about regulating their  
3 gun possession because you get convicted of a felony, you're  
4 executed. I'm not saying that's the right results, but what  
5 I'm saying is the law has changed and evolved.

6 THE COURT: But I'm supposed to be looking at what  
7 the Founding Fathers were thinking --

8 MS. KORDESTANI: I think you're --

9 THE COURT: -- the people at that time. I'm not  
10 supposed to wait until the culture is shifting, am I?

11 MS. KORDESTANI: I think, Your Honor, you  
12 rightfully can take into consideration analogues, as  
13 Mr. Coleman put it, historical analogues, and there is --

14 THE COURT: Like what? Give me one.

15 MS. KORDESTANI: Okay. That -- that even not as  
16 close in time as to now but prior in time, there were  
17 conditions, regulations, put on what kind of firearms you  
18 could -- what kind of types of firearms you could possess.  
19 So --

20 THE COURT: Well, dangerous and unusual weapons.  
21 That's a different basis than -- obviously there's nothing  
22 about putting a serial number on or removing a serial number  
23 that makes it dangerous or unusual, is there?

24 MS. KORDESTANI: I think there is, Your Honor,  
25 because --

1 THE COURT: Okay.

2 MS. KORDESTANI: Because what happens is without a  
3 marking, individuals who are either -- individuals who are  
4 already prohibited or those who are not prohibited by virtue  
5 of their status in modern age, for example, or even back in  
6 time, it somehow makes the gun unidentifiable, not -- more  
7 likely to be used in a crime. And if a crime is committed  
8 with that firearm, law enforcement would have a higher --  
9 harder time identifying who committed the crime, in fact.  
10 So I do think it makes it more dangerous and that's  
11 reflected in today's modern guidelines.

12 THE COURT: I think all the guns I think are  
13 dangerous, but I don't know that a gun that shoots and  
14 targets and aims and does everything exactly the same way  
15 with or without a serial number is any more dangerous or  
16 less dangerous because it has a serial number on it.

17 Is the gun itself any more dangerous?

18 You're telling me that the people that have the gun  
19 might be more dangerous.

20 MS. KORDESTANI: Yes, Your Honor. You're --  
21 you're -- that is the point I was trying to make, which  
22 the -- the firearm itself may not be any more inherently  
23 dangerous by virtue of the serial number removed, but what  
24 can be accomplished by, as the Court stated before,  
25 possessing it or transporting it or otherwise moving it in

1 interstate commerce can lead to dangerous consequences.

2 And -- and you're right in that, for example, the state  
3 of West Virginia, under the West Virginia Code, it's not --  
4 having a gun with an obliterated serial number is not an  
5 offense -- a criminal offense I should say.

6 THE COURT: There's a limit on the type of  
7 firearm.

8 How does the regulation operate and why?

9 MS. KORDESTANI: I'm sorry, Your Honor.

10 THE COURT: If this serial number business --

11 MS. KORDESTANI: Yes.

12 THE COURT: -- is a limitation on the type of  
13 firearm, which is what you're saying --

14 MS. KORDESTANI: Yes.

15 THE COURT: -- you're saying it's dangerous or  
16 unusual, how does it -- the regulation operate to make it  
17 more dangerous? How and --

18 Well, go ahead on how.

19 MS. KORDESTANI: Okay. Well, I think the  
20 regulation operates to make, you know, what can be -- what  
21 can be a result of its possession, transfer, use, movement  
22 through interstate commerce makes it less dangerous and  
23 contributes more to public safety in that a firearm that has  
24 markings as they are issued by any --

25 THE COURT: So almost any regulation that

1 restricts possessory rights would meet your definition?

2 MS. KORDESTANI: Would -- of -- of being  
3 constitutional, Your Honor?

4 THE COURT: Yeah.

5 MS. KORDESTANI: I --

6 THE COURT: In other words, aren't we going in a  
7 circle here?

8 If you're saying that if you make it harder to possess,  
9 then it will be harder for criminals to have guns to shoot  
10 people.

11 That might be true.

12 MS. KORDESTANI: Yes, I -- I agree that I --

13 THE COURT: You're the one that brought this  
14 second count in this indictment.

15 MS. KORDESTANI: Yes, Your Honor.

16 THE COURT: And you read the *Bruen* case when, I  
17 take it, you went to the grand jury and asked them to do  
18 this, right?

19 MS. KORDESTANI: Your Honor, I don't know if I had  
20 read it at that point or not.

21 THE COURT: Well, I'm going have to write an  
22 opinion on this pretty soon.

23 Anything else you want to say?

24 MR. COLEMAN: I think you're tuned into it, Your  
25 Honor. I think from your comments you obviously have not

1 just reviewed *Bruen*, you've thought about it. I've heard a  
2 lot of means-ends scrutiny, which is what Judge --

3 THE COURT: He said we don't do that anymore.

4 MR. COLEMAN: Right.

5 And what I think a lot of people are finding, and to  
6 some it's very repugnant because of their view of firearms,  
7 that there's not a strong tradition before the 20th century.

8 I mean, when I read *Heller* the first time and I took a  
9 lot of what Justice Scalia said that's dicta because I've  
10 been reading the authorities he relied on, I was going,  
11 yeah, yeah, I thought when we got rid of rational basis  
12 review, we're turning into strict scrutiny where it should  
13 have been all along. A gun's a gun. It's a tool. It's  
14 actually a distance weapon. It's a coward's tool. It can  
15 kill people, but so can a car, so can a pen, a knife, a  
16 fist. We're mortal and can be quite delicate.

17 THE COURT: I want to make a confession. I have  
18 the same problem with reading Justice Scalia. He gets me  
19 going, yeah, yeah, yeah, yeah.

20 MR. COLEMAN: And then you go and look it up and  
21 it's like, well, that's not long-standing at all.

22 I was surprised, to be honest.

23 THE COURT: I've got a real problem with -- well,  
24 for you not a problem.

25 I've got a real problem for the government with your

1 argument that this statute is unconstitutional. I think  
2 they've got a really difficult problem with Count Two of  
3 this indictment.

4 I'm going take a few days to think about it.

5 MR. COLEMAN: I wish you felt that way about Count  
6 One.

7 THE COURT: Well, I'm not ruling, but I don't  
8 think I do.

9 Anything further to come before the Court today?

10 MS. KORDESTANI: Just very briefly on the *Bruen*  
11 issue, Your Honor.

12 THE COURT: Okay.

13 MS. KORDESTANI: I think ultimately it's nice to  
14 be around really smart lawyers and do the intellectual  
15 debate.

16 I think as much as we're being forced under this  
17 decision to look back in time, and quite frankly I find it  
18 really hard even though I know how to analyze the law, of  
19 course, the Court and Mr. Coleman, who's a very smart lawyer  
20 do, but we're not frozen in time. Crime, punishment,  
21 history, not frozen in time. And these kind of regulations,  
22 I would submit, Your Honor, including the ones that due to a  
23 degree in this case because I've charged it that way as a  
24 possession of a firearm with an obliterated serial number,  
25 ultimately we look at public safety, who is supposed to be

1 possessing the weapons or not. And I would submit given  
2 that kind of analysis, keeping that in mind, that the  
3 922(k), as well as the 922(g), are best.

4 THE COURT: You think you can write a good opinion  
5 that says that?

6 MS. KORDESTANI: I don't think I'm going to write  
7 a better opinion than you, but I hope it's going to go my  
8 way so --

9 THE COURT: Well, I'll wait and see what's pending  
10 when I get my opinion done.

11 MS. KORDESTANI: Thank you, Your Honor.

12 THE COURT: Anything further?

13 MR. COLEMAN: As far as (g)(1), Your Honor, when I  
14 made the comment in the supplemental submission about  
15 overgeneralization, it was because -- not to be snarky at  
16 all as much as I've heard that Tories were disarmed. Well,  
17 during the Revolutionary War they were. Catholics were  
18 disarmed in England when there was the unrest and you had  
19 the Protestant and Anglican governments. Slaves were  
20 disarmed in the United States until the American Civil War.

21 Those are not fair analogues for a convicted felony  
22 disarmament, particularly when only four out of the original  
23 11 to 13 colonies even had any analogue themselves to the  
24 Second Amendment, much less prohibiting felons.

25 The comment in *Bruen* about the social balancing already

1 having been done is important. If we want to do an article  
2 of the states, if we want to change our Constitution, there  
3 are mechanisms available to do that, but with the *Bruen*  
4 ruling, even in light of Justice Kavanaugh and some of  
5 Justice Scalia's comments, the majority opinion was what  
6 Judge Thomas wrote.

7 And I was shocked at the dearth of law before the 20th  
8 century that dealt with a lot of this, but then if you think  
9 about it what was happening in the '30s?

10 THE COURT: Nobody thought that *Heller* would come  
11 along.

12 MR. COLEMAN: Oh, I've been hoping for it since  
13 law school. I didn't think it would come, but I was rooting  
14 for it really hard.

15 Thank you, Your Honor.

16 THE COURT: You're welcome.

17 All right. Court's adjourned for the day.

18  
19  
20  
21 (Proceedings concluded at 3:00 p.m., September 26, 2022.)  
22  
23  
24  
25



## 1 CERTIFICATION:

2 I, Kimberly Kaufman, Official Court Reporter, certify  
3 that the foregoing is a correct excerpt transcript from the  
4 record of proceedings in the matter of United States of  
5 America, Plaintiff v. Randy Price, Defendant, Criminal  
6 Action No. 2:22-cr-00097, as reported on September 26, 2022.

7  
8 s/Kimberly Kaufman, RMR, CRR, CRC

October 3, 2022

9 Kimberly Kaufman, RMR, CRR, CRC

DATE